

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<b>In the Matter of</b>	)	
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	)	
<b>MariTEL, Inc. and</b>	)	<b>WT Docket No. 04-257</b>
<b>Mobex Network Services, LLC</b>	)	
	)	<b>RM-10743</b>
<b>Petitions for Rule Making to Amend the</b>	)	
<b>Commission's Rules and to Provide</b>	)	
<b>Additional Flexibility for AMTS and VHF</b>	)	
<b>Public Coast Station Licensees</b>	)	
	)	
 <b>TO: The Commission</b>		

**REPLY COMMENTS OF PACIFICORP**

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## **EXECUTIVE SUMMARY**

PacifiCorp supports the rule changes initially proposed by MariTEL, which would provide needed flexibility to VPC spectrum licensees and additional opportunities for Public Safety and Critical Infrastructure Industry (“CII”) licensees to supplement their VHF high-band networks. As a CII licensee, PacifiCorp relies upon its extensive communications systems to ensure the safety and reliability of its electric system and the Northwestern power grid to which it is interconnected. Existing Part 90 VHF allocations are becoming increasingly crowded and prone to interference; use of VPC spectrum can alleviate this issue for Public Safety and CII entities while also helping them to realize significant advantages over other spectrum options. In particular, VPC spectrum can be integrated immediately into existing VHF networks with minimal engineering and without the need to buy new and expensive equipment, while also providing a unified band plan.

Effective use of this spectrum by Public Safety and CII, however, must include relief from certain maritime obligations, such as the public correspondence and channel 16 watch requirements. These obligation should remain those entities actually providing maritime communications services, who are well equipped to determine contractually or through other means how to structure a transaction to meet these obligations while transferring excess or underutilized capacity to those who can put to immediate use. This will encourage spectrum efficiency and serve the public interest, particularly with respect to Public Safety and CII use of VPC spectrum. The FCC should therefore adopt the flexible use proposals recommended by MariTEL.

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**I. INTRODUCTION**

Pursuant to Section 1.415 of the Federal Communications Commission's ("FCC's" or "Commission's") rules,<sup>1</sup> PacificCorp hereby submits its Reply Comments in the above-captioned proceeding in response to the FCC's the Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 04-257.<sup>2</sup> In the NPRM, the FCC seeks comments on proposals by MariTEL, Inc. ("MariTEL") and Mobex Network Services, LLC ("Mobex"), which seek additional flexibility

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<sup>1</sup> 47 C.F.R. § 1.415.

<sup>2</sup> *In re MariTEL, Inc. and Mobex Network Services, LLC Petitions for Rule Making to Amend the Commission's Rules to Provide Additional Flexibility for AMTS and VHF Public Coast Station Licensees*, 19 FCC Rcd 15255 (2004); 69 Fed. Reg. 48,440 (Aug. 10, 2004) ("NPRM").

for VHF Public Coast (“VPC”) and Automated Maritime Telecommunications Service (“AMTS”) licensees. PacifiCorp supports MarITEL’s proposals in this proceeding, and believes that the added flexibility would further the public interest by: (1) providing a benefit to the Public Safety and Critical Infrastructure communities, thereby enhancing homeland security and maintenance of the Nation’s critical infrastructure; and (2) encouraging the efficient use of spectrum.

## **II. BACKGROUND**

PacifiCorp provides electric service to approximately 1.6 million retail customers in service territories covering about 136,000 square miles in portions of six western states: Utah, Oregon, Wyoming, Washington, Idaho and California. PacifiCorp has more than 8,300 megawatts of generation capacity from coal, hydro, renewable wind power, gas-fired combustion turbines and geothermal, and delivers electricity through approximately 57,000 miles of distribution lines and 15,000 miles of transmission lines. PacifiCorp operates as Pacific Power in Oregon, Washington, Wyoming and California, and as Utah Power in Utah, Idaho and southwest Wyoming. Its transmission system has over 130 interconnection points to other electric utilities and generators including the Bonneville Power Administration (“BPA”)<sup>3</sup> and the Western Area Power Administration (“WAPA”).<sup>4</sup>

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<sup>3</sup> The Bonneville Power Administration operates markets electricity from 31 federally owned dams, one nuclear plant and a large wind energy program to Northwest utilities. *See*, Bonneville Power Administration, <http://www.bpa.gov/corporate/> (last visited November 5, 2004).

<sup>4</sup> Western Area Power Administration markets and delivers hydroelectric power and related services within a 15-state region of the central and western U.S. Its transmission system carries electricity from 55 hydropower plants operated by the Bureau of Reclamation, U.S. Army Corps of Engineers and the International Boundary and Water Commission. Together, these plants have a capacity of 10,600 megawatts. *See*, About Western, <http://www.wapa.gov/geninfo/whatwho.htm> (last visited November 5, 2004).

PacifiCorp is obligated to its employees, customers, and the general public to operate its facilities on a day-to-day basis in a safe and efficient manner, and to reliably maintain and repair its large electric system as safely and quickly as possible. This responsibility is heightened in time of natural disaster or man-made threat. In order to fulfill this obligation, PacifiCorp owns and operates extensive private communications systems, including microwave, fiber optics, and a substantial private land mobile radio system operating primarily in the VHF high band (150-174 MHz), with some additional operation in the UHF band (450-470 MHz). These systems are integral to protecting power system infrastructure and operating the electric power grid in the Western United States.

Beyond its immediate importance to PacifiCorp's operations, PacifiCorp's private communication system is also used to carry Special Protection Circuits (Remedial Action Schemes or "RAS") and other circuits for both public and private agencies and utilities such as Western Electricity Coordinating Council ("WECC"),<sup>5</sup> Pacific Gas and Electric,<sup>6</sup> WAPA, and BPA. The integrity of these systems is of the highest priority to the Nation's safety and the economy. PacifiCorp relies on its extensive and complex private communications system every

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<sup>5</sup> WECC is a voluntary organization whose focus is coordinating and promoting electric system reliability. In addition to promoting a reliable electric power system in the Western Interconnection, WECC supports efficient competitive power markets, open and non-discriminatory transmission access among members, a forum for resolving transmission access disputes, and an environment for coordinating the operating and planning activities of its members. The WECC region encompasses a vast area of nearly 1.8 million square miles. It is the largest and most diverse of the ten regional councils of the North American Electric Reliability Council (NERC). *See*, About WECC, <http://www.wecc.biz/about.html> (last visited March 26, 2004).

<sup>6</sup> Pacific Gas and Electric Company is one of the largest combination natural gas and electric utilities in the United States. The company provides natural gas and electric service to approximately 13 million people throughout a 70,000-square-mile service area in northern and central California. *See*, Pacific Gas & Electric Company, [http://www.pge.com/about\\_us/company\\_profile/about\\_pge/index.html](http://www.pge.com/about_us/company_profile/about_pge/index.html) (last visited March 26, 2004).

day, across its entire service area, to protect its employees while they are performing often-dangerous work and to maintain the safety and reliability of its electric network and each of the networks to which PacifiCorp is interconnected.

PacifiCorp's effectiveness in supporting its utility operations -- and in turn its users -- is directly dependent upon its ability to utilize its currently licensed spectrum without harmful interference and to expand its operations where necessary to provide adequate coverage for its electric operations. PacifiCorp utilizes the VHF high-band for much of its critical operations due to the propagation characteristics needed to cover its diverse territory in the Pacific Northwest. The majority of this territory is sparsely populated, yet PacifiCorp has a public interest mandate to provide these areas with reliable electric service. Wide area coverage is essential given the limited number of frequencies available for this kind of operation, as well as the limited number of radio transmission sites available in the mountainous terrain present in much of the PacifiCorp operating territory. The Part 90 VHF band relied upon by PacifiCorp, however, has become increasingly congested and subject to interference, rendering some of its currently licensed radio frequencies vulnerable. This is due to the "shared" nature of these Part 90 channels. Opportunities to supplement or expand PacifiCorp's communications operations in support of its vital utility functions would be welcome, particularly in those bands that would allow PacifiCorp to realize instant synergies and easy integration of new frequencies. For all of these reasons, PacifiCorp requested and was granted rule waivers to acquire and use inland VPC spectrum as part of its Part 90 land mobile system.<sup>7</sup> However, that spectrum covers only a portion of PacifiCorp's operating territory, and not the more densely populated areas.

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<sup>7</sup> *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Public Notice, Report No. 1756, File No. 0001554439 (rel. Feb. 25, 2004)  
(continued...)

### **III. THE PUBLIC INTEREST WOULD BE SERVED BY ALLOWING MORE FLEXIBLE USE OF VPC SPECTRUM**

#### **A. Flexible Use Will Benefit Private Land Mobile Users, Including Those Engaged in Activities that Involve Safety of Life and Property**

##### **1. VPC Spectrum is Compatible with Existing VHF Public Safety and Critical Infrastructure Systems**

As MariTEL noted in its comments, permitting flexible use of maritime spectrum will enable Public Safety and Critical Infrastructure licensees to meet communications requirements where they may otherwise be unable to do so.<sup>8</sup> VHF, UHF and other spectrum allocations available to these entities under Part 90 have become increasingly crowded in recent years, and are more prone to interference than they have been in the past. Transitioning to other bands is also generally not an option due to the inability to transition existing equipment and crowding that is also endemic to other spectrum bands. In PacifiCorp's case, transitioning is also not feasible due to the unique propagation characteristics of the VHF band – a must in the mountainous and rugged Pacific Northwest territory served by PacifiCorp, where higher frequency bands, such as 800 or 900 MHz, would require massive rebuilding of PacifiCorp's communications infrastructure, at ratepayer expense, and this is assuming spectrum and transmission sites are even available.

Because of the proximity of VPC frequencies to the VHF spectrum commonly employed by Public Safety and Critical Infrastructure entities, these licensees would be able to realize considerable synergies in connection with the use of VPC spectrum, including the ability to use existing equipment and base stations as part of an integrated network. Being able to take

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(granting the assignment of VPC frequencies to PacifiCorp under call signs WPOJ517, WPOJ518, WPOJ519, WPOJ520, and WPOJ522).

<sup>8</sup> MariTEL at 3.



advantage of a unified channel plan throughout a network would minimize the engineering necessary to maintain a system and to fine tune a licensee's coverage, and the geographic licensing of VPC frequencies will also lessen the administrative burdens associated with license maintenance for typical site-based VHF systems. This is particularly critical for cash-strapped and short-handed Public Safety entities and other Critical Infrastructure entities with long purchasing cycles. Indeed, over the past several years, the FCC has already found it to be in the public interest to permit the use of VPC spectrum for Public Safety purposes and for Critical Infrastructure use.<sup>9</sup> Accordingly, amending the FCC's rules to permit more flexible use of VPC spectrum would further the public interest.

## **2. Flexible Use of VPC Spectrum Would Benefit Entities With Homeland Security Functions**

The FCC is well aware of the vital role that private land mobile communications plays in utility functions,<sup>10</sup> and Congress has long recognized this as well.<sup>11</sup> PacifiCorp's mobile radio

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<sup>9</sup> MariTEL at 3, n. 6; *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Public Notice, Report No. 1411, File No. 00001132016 (rel. Feb. 5, 2003); *Virginia Decision*, 19 FCC Rcd 15454 (2004); *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Public Notice, Report No. 1756, File No. 0001554439 (rel. Feb. 25, 2004).

<sup>10</sup> See, e.g., *In re Application for Consent to the Assignment of a Five Channel 220 MHz Nationwide License from Rush Network Corp. to the Association of American Railroads*, DA 03-3749, at ¶ 6 (rel. Nov. 24, 2003) (Finding public safety and spectrum efficiency benefits in granting waiver to AAR to operate commercial 220 MHz channels on a private basis).

<sup>11</sup> S. Rep. No. 191, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S.C.C.A.N. 2237, 2250 ("In managing spectrum, the FCC . . . first should attempt to meet the requirements of those radio users which render important services to large groups of the American public, such as governmental entities and *utilities*, rather than the requirements of those users which would render benefits to relatively small groups.") (emphasis added); See also Balanced Budget Act, § 3001 et seq., Pub. L. No. 105-33, Title III, 111 Stat. 251, 258 (1997); House Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 192 (exempting public safety radio services from auction, including those used by utilities as protectors of the safety of life, health, and property).

system enables it to fulfill its obligations to its customers and the American public to actively monitor and police its system against terrorist attacks, natural disasters, and other disruptive occurrences, as well as to manage those incidents that may occur, and to restore operations quickly, safely and efficiently. Uninterrupted and interference-free communications enable utilities to provide for coordinated response and allow for rapid recovery and community rebuilding. The use of VPC frequencies as a part of PacifiCorp's land mobile network will aid in its efforts in this regard.

The FCC has indicated a willingness in the past to provide for more flexible use of VPC spectrum. For example, the Commission adopted geographic licensing in the VPC services in the first instance to promote flexibility in licensing.<sup>12</sup> PLMRS and utility licensees were also specifically contemplated as beneficiaries of the FCC's partitioning and disaggregation rules for VPC frequencies.<sup>13</sup> As the Commission noted in its *Third Maritime Report and Order* in response to concerns expressed by the United Telecom Council ("UTC"), partitioning and disaggregation "will allow PLMR users to obtain spectrum through partitioning and disaggregation arrangements in areas beyond those in which ... our Rules currently allow them to be licensed."<sup>14</sup>

Recent FCC decisions continue to highlight the unique communications needs of Public Safety and CII entities, as well as the importance of providing sufficient, interference-free spectrum to these groups. For example, the FCC's 800 MHz Public Safety interference docket extended a number of heightened interference protection measures to Public Safety and CII

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<sup>12</sup> See, e.g., *In re Amendment of the Commission's Rules Concerning Maritime Communications*, 13 FCC Rcd 19853 at ¶ 38 (1998) ("*Third Maritime Report and Order*").

<sup>13</sup> *Third Maritime Report and Order* at ¶ 11.

<sup>14</sup> *Third Maritime Report and Order* at ¶ 11.

licensees.<sup>15</sup> The Wireless Telecommunications Bureau also recently rejected a request by the Industrial Telecommunications Association (“ITA”) to eliminate the requirement that frequency coordinators seeking to assign channels formerly designated for use in the Railroad, Power or Petroleum Radio Services confer with the primary coordinator of those services.<sup>16</sup> In doing so, the Bureau noted with approval the FCC’s previous rationale for safeguarding these frequencies, stating that “radio is used as a critical tool for responding to emergencies that could impact hundreds or even thousands of people... Any failure on their ability to communicate by radio could have severe consequences on the public welfare.”<sup>17</sup> The Bureau further determined to preserve the concurrence requirement that has “served and protected the critical infrastructure and quasi-public safety community.”<sup>18</sup> PacifiCorp concurs with the Bureau’s statements, and submits that the FCC has the unique opportunity in this rulemaking to further the flexible use envisioned for VPC licensees by adopting the additional flexible use rules proposed by MariTEL, and at the same time to support Public Safety and Critical Infrastructure entities that preserve the safety of life and property. Accordingly, PacifiCorp urges the FCC to adopt the rule changes suggested by MariTEL. At the very least, the Commission should extend flexible use to Public Safety and CII licensees by Rule, as it has previously done only through rule waiver.

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<sup>15</sup> *In re Improving Public Safety Communications in the 800 MHz Band*, ET Docket Nos. 02-55, Report and Order, FCC 04-168 (Aug. 6, 2004).

<sup>16</sup> *In re Industrial Telecommunications Association Informal Request for Certification to Coordinate the Power Radio Service, Railroad Radio Service, and Automobile Emergency Radio Services under Part 90 of the Commission’s Rules*, RM-10687, Order DA 04-3375 (rel. Oct. 29, 2004) (“ITA Order”).

<sup>17</sup> *ITA Order*, at ¶ 10, citing *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies*, Second Report & Order, 12 FCC Rcd 14307, ¶41 (1997) (“*Refarming Second R&O*”).

<sup>18</sup> *ITA Order* at ¶ 10.

**B. Flexible Use for Land Mobile Operations Should be Free of Certain Maritime Obligations**

As recognized by MariTEL, certain Part 80 rules could unnecessarily restrict land mobile use of these frequencies, and could hinder the practical ability of VPC licensees to most effectively use this spectrum. For example, Part 80 currently requires VPC licensees to maintain a watch on channel 16, and to adhere to certain transmit power limits.<sup>19</sup> As Paging Systems, Inc. (“PSI”) notes, deletion of the “public correspondence” requirement, removal of the discussion of “ships” in Section 80.475(c) and amendment of Section 20.9 to provide VPC licensees the flexibility to choose between commercial and private operation would all serve to increase flexibility in the VPC service, and would constitute a “much needed change” since the rise of PCS and other services have limited the market initially envisioned for VPC and AMTS spectrum.<sup>20</sup> PacifiCorp concurs, and believes that any Part 80 rules that could unnecessarily impact land mobile use of this spectrum should be closely evaluated as to their continued usefulness.

Relief from maritime-specific obligations is particularly critical for utility use of VPC spectrum. PacifiCorp uses its currently licensed VHF spectrum to support utility operations that require its field personnel to conduct highly sensitive and complex operations in the proximity of high voltage wires or other dangerous components of the power grid. In this regard, work performed by line crews requires their whole focus, and any deviation from protocol could result in severe injury or death. Any requirement to provide priority to another’s communications or to fulfill a watch obligation, therefore, is not merely an inconvenience; it is a potential distraction that may have serious and immediate consequences.

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<sup>19</sup> MariTEL at 5, n. 12.

<sup>20</sup> PSI at 3.

Contrary to some parties who assert that the relief requested by MariTEL may constitute a *de facto* reallocation of VPC spectrum to land mobile services,<sup>21</sup> PacifiCorp believes that there are methods that could accommodate both land mobile and maritime use of VPC spectrum and permit the maritime use that the FCC intended for these frequencies. As the Coast Guard recognizes, in areas removed from navigable waterways VPC frequencies may be used for purposes other than “public correspondence” without affecting the integrity of VPC’s intended maritime uses.<sup>22</sup> The Coast Guard also suggests that VPC licensees could provide plans to the Commission illustrating how they could fulfill both their maritime obligations and still employ their spectrum for land mobile uses as well.<sup>23</sup> PacifiCorp believes that any maritime obligation can and should be retained by those parties who have the expertise and the business desire to serve maritime needs, and that these obligations can be addressed adequately through private contracting, creative partitioning and/or disaggregation, sharing agreements and by other means. MariTEL itself has pledged to ensure that its maritime systems would maintain sufficient capacity to provide maritime communications.<sup>24</sup> PacifiCorp does not believe it is desirable or prudent to specify a numerical limit on the number of land mobile “customers” a VPC licensee may serve, as suggested by the Coast Guard.

### **C. Flexibility in the Rules Will Encourage Efficient Use of Underutilized Spectrum**

The flexible use proposed by MariTEL will promote the utilization of otherwise underutilized spectrum. The proposed changes to the rules support the principles outlined by the

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<sup>21</sup> Coast Guard at 1.

<sup>22</sup> Coast Guard at 2.

<sup>23</sup> *Id.*

<sup>24</sup> MariTEL at 4.

Commission's Spectrum Policy Task Force encouraging economic efficiency and transferability,<sup>25</sup> and is consistent with the goals of the various maritime proceedings establishing the use and operational parameters of the VPC band. The goal of spectrum efficiency in the VPC band was also recognized recently in the FCC's *Secondary Markets* proceeding, which included VPC as a band eligible for spectrum leasing in order to promote flexibility and effective use of spectrum.<sup>26</sup> The public interest would be well-served by permitting additional flexibility in order to permit the alternative use of VPC spectrum that would otherwise remain unused for maritime operations.

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<sup>25</sup> Spectrum Policy Task Force Report at 21, ET Docket No. 02-135 (Nov. 2002) ("The Task Force concluded that the Commission can best promote economic efficiency by providing spectrum users with flexibility of spectrum use and ease of transferability in order to allow maximization of the value of the services provided. Flexibility provides incentives for economically efficient use and discourages economically inefficient use by ensuring that spectrum users will face the opportunity cost of their spectrum use.").

<sup>26</sup> *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, FCC 03-113, at ¶ 84 n. 182 (2003) ("*Secondary Markets Order*").

#### IV. CONCLUSION

PacifiCorp concurs with MariTEL that flexible use of VPC spectrum will benefit both the current licensees of this spectrum and the potential new users including Public Safety and Critical Infrastructure entities. Flexible use also comports with the FCC's spectrum use goals. For the foregoing reasons, PacifiCorp respectfully requests the Commission consider these Reply Comments and proceed in a manner consistent with the views expressed herein.

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